BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of:	)	
	)	
Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use	)	ET Docket No. 94-32

TO: The Commission

COMMENTS OF
MANUFACTURERS RADIO FREQUENCY ADVISORY COMMITTEE, INC.

Manufacturers Radio Frequency Advisory Committee, Inc. ("MRFAC"), by its counsel, hereby responds to the Notice of Proposed Rule Making in the above-captioned proceeding (FCC 94-272, released November 8, 1994; hereinafter cited as "Notice").

INTRODUCTION

MRFAC is the Commission-certified, non-profit coordinator for the Manufacturers Radio Service, one of the largest of the Industrial Radio Services with 14,360 licensed stations as of July 1994. MRFAC (and its predecessor-in-interest, the Telecommunications Committee of the National Association of Manufacturers) have coordinated frequencies for the nation's manufacturers since 1954. MRFAC operates a state-of-the-art, computer-based frequency coordination center at its offices in Herndon, Virginia. MRFAC coordinates some 3,250 applications annually. Despite this substantial volume MRFAC has consistently been rated by the Commission as among the best of coordinators both

in terms of speed-of-service and in terms of work quality.[1]

MRFAC also represents and advocates the spectrum interests of the nation's manufacturers. It includes among its members numerous Fortune 100 manufacturers, as well as small to mid-sized enterprises. In short MRFAC is well-qualified to comment on the implications of spectrum management decisions from the manufacturing perspective.

BACKGROUND

By means of the subject Notice the Commission seeks comment as to the disposition of the first 50 MHz being transferred from Federal Government to private sector use under the terms of the Omnibus Budget Reconciliation Act of 1993 ("OBRA"). In particular the Notice seeks comment on the agency's proposal to allocate the spectrum to two very broad categories, Fixed and Mobile. It proposes this type of allocation on the theory that market forces can best ensure that the spectrum is "put to its best and most valued use ...." Id. at para. 8. The Notice goes on to seek comment as to licensing this spectrum within the Fixed and Mobile category by use of auctions.

The Notice proposes to allow users to set their own channelization, signal strength, modulation and antenna characteristics "consistent with not causing interference to other users." Id. at para. 10. "Interference to operations in adjacent service areas would be controlled through power limits at service

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[1] See Public Notice: Private Radio Bureau Frequency Coordinator Error Rate Study Summary of Findings (June 22, 1994).

area boundaries." Ibid.

While the Notice indicates a preference for proceeding by way of generic allocations as discussed above, the Notice also requests comments on allocating the spectrum to specific services.

DISCUSSION

MRFAC appreciates the Commission's desire to ensure that the subject spectrum is put to its highest use. However, allocation of spectrum to generic categories such as Fixed and Mobile will not accomplish this goal. Indeed such a decision would raise fundamental questions as to whether the agency was fulfilling its statutory mandate to regulate the radio spectrum in the public interest.

Preliminarily it should be noted that "Fixed" and "Mobile" are high-level generalizations typically employed at the national and international level for achieving harmony of use between and among Administrations. Such an allocation has typically been accompanied or at least followed by further specification of the services to be accommodated within the subject band.

The Notice's own example illustrates the point. While pointing to its decision in ET Docket No. 92-91 to allocate 220 MHz for Fixed and Mobile uses at 2 GHz, in Gen. Docket No. 90-314 the agency later sub-allocated 140 MHz of this spectrum for Personal Communications Services. Id. at n. 22.

Here by contrast the Commission contemplates an allocation which would remain at the Fixed and Mobile level of

generality and go no further. Such an approach is, if not unprecedented, at least highly unusual.

Moreover, such an approach to spectrum management calls into question fulfillment of the agency's responsibility to administer the radio spectrum in the public interest. Section 303 of the Communications Act prescribes, in pertinent part, as follows:

> Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall
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> * * *
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> (c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate.

47 U.S.C. § 303(c). And Section 309(j), enacted as part of OBRA, explicitly provides that "Nothing in this subsection, or in the use of competitive bidding shall -- (A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter...." 47 U.S.C. § 309(j)(6).

In granting the Commission auction authority, Congressional leaders made it clear that such authority was not to be used in place of, or as a substitute for, traditional service allocations.

> [I]t is time to give the concept of spectrum auctions a trial. Senator Stevens and I have thus crafted a compromise auction amendment that attempts to employ auctions as a way of distributing licenses without weakening any of the public interest obligations of radio licensees. <u>This proposal does not, however, allow auctions to be used to allocate frequencies among different service</u>

> categories. Frequency allocation decisions must continue to be made by the FCC, not by the private marketplace. But this amendment would allow the FCC to use auctions to assign licenses to particular users.

139 Cong. Rec. S1438 (daily ed. February 4, 1993)(Statement of Sen. Inouye); see also 139 Cong. Rec. S1442 (daily ed. February 4, 1993)(Statement of Sen. Stevens).

The Communications Act aside, policy considerations militate against the Fixed/Mobile proposal. The Notice references the fact that a petition was filed by the Coalition of Private Users of Engineering Multimedia Technologies, or "COPE." MRFAC is a member of this Coalition. COPE has sought an allocation of additional spectrum for private, internal purposes. COPE's petition was filed December 23, 1993, some 12 months ago; yet the Notice treats the Petition with little more than vague statements to the effect that its concerns will be treated later, together with the suggestion that "private users can receive service from commercial service providers and can compete in obtaining spectrum on the same basis as commercial providers." Id. at para. 16.

Observations such as these miss the point: private users such as MRFAC members can not simply take service from "commercial service providers ...." Id. Their operations -- including just-in-time delivery of components to the assembly line, inventory control, materials handling, and security and fire protection, for example -- demand radio systems under the exclusive control of the licensee. When assembly-line interruption means losses of hundreds of thousands of dollars per hour, reliance on a third-party

contractor for service simply will not do.

In addition, manufacturers often find it necessary to test production units; these tests are heavily instrumented for the collection and analysis of telemetry. There can also be a substantial requirement for voice communications incidental to these tests. These are not the sort of applications suitable for carrier-provided service.

Likewise internal radio systems within and among manufacturing locations are essential to reliable "man-down" communications; in other words, privately-owned and operated systems play an important role in manufacturing safety.

In short, even if manufacturers could compete in auctions with carriers -- a questionable notion -- the Commission's failure to recognize the importance of privately-licensed radio systems to productivity and safety is disturbing.[2]

Years ago the agency was confronted with a similar situation -- only then the Commission itself determined that private users had needs which they need not look to carriers to

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[2] Compounding the error is the Commission's tentative determination that "most of the services to be provided in the spectrum would likely meet the statutory criteria for auctions." Id. at 9. It is unclear how the agency could make a judgment like this at this point in time: the services to be provided via the spectrum are many and varied and some would certainly not meet Section 309(j) criteria -- at least not if the agency allocated some of the spectrum for private, internal purposes. Indeed it is the very refusal to allocate any of the subject spectrum for private radio services which enables the Notice to conclude that "most of the services to be provided in this spectrum would likely meet the statutory criteria for auctions." Id. In other words, the Notice's reasoning is circular.

satisfy.

At that time, the nation's telephone industry argued against the Commission's proposal to liberalize licensing of radio spectrum to private users for their internal purposes. In rejecting telco arguments that business and industry could rely upon common carrier facilities, the Commission said:

> The record supports the determination that there is a need for private point-to-point systems. In many cases, the operation of the private users is such that it is not convenient or practicable for common carriers to provide such service (e.g., remote or isolated business operations). In this connection, it may be observed that certain of the private users now licensed endeavored to get the common carriers to provide such service initially, and constructed their private systems only when the carriers refused to do so. Even in areas where common carrier facilities and personnel are readily available, there appears to be a need for private systems.... [S]uch private systems would provide for better control and flexibility for meeting their own hour-by-hour operational and administrative needs.

Allocation of Frequencies in the Bands Above 890 Mc., 27 FCC 359, 413(1959)(emphasis added).

The record is devoid, and the Notice is silent, as to any reasoned basis upon which to explain this shift in position.

> An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.

Greater Boston Television Corporation v. F.C.C., 444 F.2d 841, 852 (D. C. Cir. 1970)(footnotes omitted). This factor alone calls into serious question the propriety of the Fixed/Mobile proposal.

CONCLUSION

The Commission's Notice asks (1) whether the agency should allocate spectrum to specific services and (2) what those services should be. The answer to question (1) is affirmative; the answer to question (2) is private. The Report and Order should so hold.

Respectfully submitted

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